

NEW BEGINNINGS: A HYBRID APPROACH TO ACCOUNTABILITY IN LIBYA

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On October 20, 2011, rebel forces killed Muammar Gaddafi, thereby ending an eight-month civil war as well as Gaddafi's forty-two-year rule over Libya.¹ The National Transitional Council ("NTC"), the interim government, has a huge task before it—establishing a democracy where one has never existed. Part of this task will entail grappling with crimes committed both during the civil war and throughout Gaddafi's reign. Building a new government has its challenges, but the situation in post-conflict Libya presents complications that will impact the way the new government handles the crimes of the former regime. Given these obstacles, the NTC should seek international assistance as it develops a transitional justice plan. A hybrid approach to accountability, involving both local and international actors, will put Libya on stronger footing as it emerges on the global stage as a renewed country.

The civil war that ended in October 2011 began eight months earlier during the Arab Spring, in which people throughout the Middle East stood up against their governments and fought for a change in regime.² Bolstered by the success of protesters in Tunisia and Egypt, Libyans seized the moment and rose up against Muammar Gaddafi, the despot who had ruled the country with an iron fist for over four decades.³ Known for suppressing opposition with extrajudicial executions, torture, and public trials, Gaddafi was just as ruthless during the uprising. He ordered attacks on peaceful

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1. Neil MacFarquhar, *An Erratic Leader, Brutal and Defiant until the End*, N.Y. TIMES (Oct. 20, 2011), <http://www.nytimes.com/2011/10/21/world/africa/qaddafi-killed-as-hometown-falls-to-libyan-rebels.html?pagewanted=all>.

2. See generally Gary Blight, Sheila Pulham & Gary Torpey, *Arab Spring: An Interactive Timeline of Middle East Protests*, THE GUARDIAN (Oct. 20, 2011, 5:40 EDT), <http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline> (providing an infographic timeline of Middle East uprisings).

3. Richard Boudreaux, *Eccentric and Brutal, He Met His End as a Fugitive*, WALL ST. J. (Oct. 21, 2011), <http://online.wsj.com/article/SB10001424052970203752604576643061691909524.html>.

protesters throughout the country, and torture, deportation, rape, and disappearances were all systematic during this time.⁴

Now that the NTC is in power and making plans for the future, it must also address the crimes of the past, both during and before the civil war that toppled the Gaddafi government. The International Criminal Court (“ICC”) issued arrest warrants for Gaddafi and two of his aides in June 2011 for crimes against humanity stemming from the uprising.⁵ There are also, however, untold crimes that occurred during Gaddafi’s forty-two-year rule for which he and quarry are responsible.

The NTC, which has thousands of prisoners in detention without charge, may also want to keep its mechanisms of accountability inside its borders and hold purely domestic trials.⁶ The best option, however, is a hybrid model that involves both national and international efforts. Although no one approach will be satisfactory to all interested parties, a transitional justice plan involving hybrid institutions would best serve the two overarching goals of lending legitimacy to the process of assigning criminal responsibility and of strengthening Libya’s legal system.

A purely international approach to accountability will provide only limited justice to the people of Libya. With Gaddafi deceased, the ICC will try only two individuals for crimes committed during the uprising, Saif al-Islam Gaddafi and Abdullah al Senussi—assuming the ICC can get custody and assuming the ICC chooses not to prosecute them itself.⁷ Standing alone, this effort at

4. Office of the Prosecutor, Int’l Criminal Court (ICC), *First Rep. of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1970*, ¶¶ 33–34 (May 5, 2011), <http://www.icc-cpi.int/NR/rdonlyres/A077E5F8-29B6-4A78-9EABA179A105738E/0/UNSCLibyaReportEng04052011.pdf>.

5. See Situation in the Libyan Arab Jamahiriya, Case No. ICC 01/11-13, Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi Issued on 27 June 2011, <http://www.icc-cpi.int/iccdocs/doc/doc1099321.pdf>; Situation in the Libyan Arab Jamahiriya, Case No. ICC 01/11-14, Warrant of Arrest for Saif Al-Islam Gaddafi Issued on 27 June 2011, <http://www.icc-cpi.int/iccdocs/doc/doc1099329.pdf>; Situation in the Libyan Arab Jamahiriya, Case No. ICC 01/11-15, Warrant of Arrest for Abdullah Al-Senussi Issued on 27 June 2011, <http://www.icc-cpi.int/iccdocs/doc/doc1099332.pdf>; see also Situation in the Libyan Arab Jamahiriya, Case No. ICC 01/11-14-Red, Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed AbuMinyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi issued on 16 May 2011, http://nifcrimes.com/Libya_redacted.pdf.

6. The NTC must also, of course, look into the crimes that occurred at the hands of its supporters. As of October 27, there are credible reports of prisoner mistreatment. Mary Beth Sheridan & Colum Lynch, *Gaddafi Loyalist Injured in Custody of Revolutionaries*, WASH. POST (Oct. 27, 2011), http://www.washingtonpost.com/world/middle_east/gaddafi-loyalist-injured-in-custody-of-revolutionaries/2011/10/27/gIQAo7hMNM_story.html?hpid=z2.

7. The ICC does not have its own police force. It relies instead on the law enforcement officers of other countries to execute arrest warrants. See Aaron Gray-Block, *Gaddafi Son Eyes Safety, Talks to Hague*, REUTERS (Oct. 28, 2011), <http://www.reuters.com/article/2011/10/28/us-libya-idUSTRE79F1FK20111028>.

accountability will likely be viewed as incomplete by the Libyan people, who may then take matters into their own hands and engage in extrajudicial retaliation.

Another option would be for Libya to hold trials internally, perhaps in concert with any trial that occurs at the ICC. The problem here, however, is one of capacity. It is unclear whether the legal framework that existed under Gaddafi will be adequate to address the crimes committed during the civil war or under Gaddafi's rule.⁸ One Libyan lawyer commented, "What we have been through is something unusual. We don't have a court that applies for that."⁹ Given the challenges of a purely domestic approach to accountability, international assistance could be the most beneficial way for Libya to demonstrate its commitment to human rights and the rule of law.

A hybrid approach to justice means that international actors would work with Libyan actors—most likely within Libya—to develop a transitional justice plan to address the particularities of the Libyan situation. The benefits of hybrid efforts in this case are twofold. First, as Libya emerges from the Gaddafi era, it needs to establish its legitimacy as a renewed country, both internally and externally. A purely domestic effort may lead to claims of bias within Libya, as rival tribal and regional groups claim that their interests are disregarded or their members are unfairly targeted for prosecution. The presence of international actors will lend legitimacy to the process in Libya and will result in heightened local buy-in because bias will be less of an issue.¹⁰ At the same time, hybrid initiatives will increase the legitimacy of the transitional process in the eyes of the international community.

Second, countries in transition often need to revamp the existing legal framework to allow accountability measures to take hold. Under a hybrid approach to justice, the national and international actors working together would engage in knowledge transfer, thereby allowing Libya to benefit from the experience of others who have worked in similar situations. This knowledge transfer results in local capacity building, which is crucial following a civil war, brutal regime, or both. A purely international effort might be able to mete out limited justice, but Libya would not reap

8. Mary Beth Sheridan, *Prisoners in Libya Languish Without Charge*, WASH. POST (Oct. 22, 2011), http://www.washingtonpost.com/world/middle_east/prisoners-in-libya-languish-without-charge/2011/10/22/gIAz0EZ7L_story.html?hpid=z1.

9. *Id.*

10. In El Salvador, for example, a hybrid truth commission was established following a civil war because post-war divisions were such that it would have been impossible for the population to trust a Salvadoran to act without bias. See Elizabeth B. Ludwin, *Trials and Truth Commissions in Argentina and El Salvador*, in ACCOUNTABILITY FOR ATROCITIES: NATIONAL AND INTERNATIONAL RESPONSES 273, 286 (Jane Stromseth ed., 2003).

the benefits of learning from international actors with experience in post-conflict justice.

Libya's hybrid approach to accountability should include trials, a truth commission, and perhaps amnesty. Hybrid courts have proven to be successful in Sierra Leone and Cambodia, among other countries. In Libya's case, a court situated within Libya and presided over by national and international judges would hold trials of people suspected of committing war crimes and crimes against humanity as well as other offenses during Gaddafi's regime and during the civil war. A truth commission, staffed by both national and international investigators, will allow people throughout the country to play a role in reconstructing the narrative from the four decades under Gaddafi. The commission should interview people from all sides to the conflict, and the presence of international investigators will help minimize claims of bias among the commission. Finally, there has been some talk among the NTC of issuing amnesty for Gaddafi's supporters who did not commit war crimes or crimes against humanity during the civil war and who agree to cooperate with the new government.¹¹ Although amnesties are controversial mechanisms of dealing with past atrocities, they may have their place in this situation and may help Libya start anew. Any amnesty, however, should come with the requirement that the individual testify before the truth commission as a condition of being granted amnesty. This approach means that, although the individual is not legally punished for his actions, he admits to them and sheds light on what took place during the war.

However the NTC chooses to address the crimes of the past, it must remain impartial and address any crimes committed by its own supporters as well as those who supported Gaddafi. Any approach it takes to justice is likely to be met with claims of bias, which is why the international community should have a partnership role in Libya's transition. As Libya moves forward and reintroduces itself to the world, it will also need to look backward and address the atrocities of its past.

11. Sheridan, *supra* note 8.